

## **902 KAR 47:050. Ban of paint, coatings, and certain consumer products containing lead.**

RELATES TO: KRS 211.901-211.905, 211.994, 217.801, 217.990(7)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.180, 211.901, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.090 and 211.180 authorize the Cabinet for Health Services to adopt administrative regulations for the prevention and control of health hazards. In addition, KRS 211.901 authorizes the cabinet to adopt administrative regulations for the prevention of lead poisoning. The function of this administrative regulation is to ban lead-containing paint and similar surface coatings and toys, certain furniture and other consumer products on which lead-containing paint and coatings are used. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services and its designated agents.

(2) "Consumer product" means the article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of the consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, but the term does not include:

(a) Articles not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of the consumer;

(b) Tobacco or tobacco products;

(c) Motor vehicle, or motor vehicle equipment;

(d) Economic poisons;

(e) Aircraft or related equipment or appliances;

(f) Boats, vessels, or appurtenances to such;

(g) Drugs, devices, or cosmetics;

(h) Foods or feed.

(3) "Paint and other similar surface coatings" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film if a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, like as the pigment in a plastic article, or those materials which are actually bonded to the substrate, by electroplating or ceramic glazing.

(4) "Lead-containing paint" means paint or other similar surface coatings containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint or coating film.

(5) "Toys and other articles intended for use by children" means those toys and other articles which are intended to be entrusted to or for use by children. This does not include all articles to which children might have access simply because they are present in a household.

(6) "Furniture article" means those movable articles: used to support people or things; other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console, televisions, and sofas. The term "furniture article" does not include appliances, such as ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers, fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.

Section 2. Scope and Application. (1) The manufacture or distribution of lead-containing paint and similar surface coatings for general consumer use; toys and other articles intended for use by children that bear lead-containing paint or similar surface coatings; and furniture articles for consumer use that bear lead-containing paint or similar surface coatings are hereby banned within the Commonwealth of Kentucky.

(2) The ban applies to the products in the categories described in subsection (1) of this section which are "consumer products" as defined in Section 2(2) of this administrative regulation which includes those articles produced for use by the consumer in or around the home, in the school, in recreation or otherwise covered by this administrative regulation. Paints for motor vehicles and boats are not included since they are not within the definition of "consumer product." The ban, in addition to applying to products sold directly to consumers, does apply to products which, after sale, are used or enjoyed by consumers, like paints and similar surface coatings used on residences, schools, hospitals, parks, playgrounds, public buildings, and other areas where consumers have direct access to the painted or coated surface.

(3) The ban is considered necessary since it has been determined by the scientific community that there is an unreasonable risk of lead poisoning in children associated with and having access to paints and similar surface coatings containing lead in excess of 0.06 percent by weight of the total nonvolatile content or weight of the dried paint or coating film.

Section 3. Exemptions. (1) The following categories of products are exempt from the scope of the ban established by this administrative regulation provided they comply with the requirements of subsection (2) or (3) of this section:

- (a) Agricultural and industrial equipment refinish coatings;
- (b) Industrial (and commercial) building and equipment, maintenance, coatings, including traffic and safety marking coatings;
- (c) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings);
- (d) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances;
- (e) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

(2) The products listed in subsection (1) of this section are exempted provided:

(a) That these products bear on the main panel of their label, in addition to the labeling that may be otherwise required, the signal word "Warning" (unless some other signal word is required) and the following statement: "Contains Lead. Dried Film of This Paint May Be Harmful If Eaten or Chewed."

(b) That these products also bear on the main or secondary panel of the label the following additional statement or its practical equivalent: "Do not apply on toys and other children's articles, furniture, or interior surfaces of a dwelling or facility which may be occupied or used by children." "Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed." "Keep out of reach of children." If the statement required by the preceding subsection is placed on a label panel other than the main panel, the label statement required to be on the main panel shall contain the following additional statement: "See other cautions on \_\_\_\_\_ (insert 'side' or 'back,' as appropriate) panel."

(c) The placement, conspicuousness, contrast, and type size of the label statements required by this section shall comply with the requirements of the Kentucky Hazardous Substances Labeling Act, KRS 217.650 to 217.710 and 217.993, the U.S. Consumer Product Safety Act (PL 92-573; 15 USC 2051, et seq.) as amended, and regulations adopted pursuant thereto.

(3) The following products are exempt from the scope of the ban established by this section and no cautionary labeling is required:

- (a) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing

paints;

(b) Artists' paints and related materials;

(c) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

Section 4. Test Procedures. The test procedures prescribed in the standards established by the Association of Official Analytical Chemist, 14th Edition, shall be applicable to administrative regulations adopted by the cabinet relating to paint and similar surface coatings. A copy of this publication is available in the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, and is available for public inspection and copying, Monday - Friday, 8 a.m. - 4:30 p.m. A copy of the publication may be obtained by writing to the Association of Official Analytical Chemist, Inc., 1111 N. 19th Street, Suite 210, Arlington, VA 22209.

Section 5. Compliance. Paint and other similar surface coatings which are in compliance with applicable standards adopted by the United States Consumer Product Safety Commission, shall be considered to be in compliance with this administrative regulation. In the event of a variance between this administrative regulation and the regulations adopted by the United States Consumer Product Safety Commission relating to paint and other similar surface coating materials, compliance with the federal regulations shall be deemed compliance with the provisions of this administrative regulation.

Section 6. Issuance and Service of Notice of Noncompliance. (1) If test procedures prescribed in Section 4 of this administrative regulation reveal that paint or other similar surface coatings are not in compliance with the standards set forth therein, the cabinet shall notify the owner of the violations in writing. The notification shall:

(a) Set forth the specific violations found;

(b) Establish a specific and reasonable period of time for the correction of the violations; and

(c) State that an opportunity for appeal from the notice of noncompliance shall be provided if a written request for a hearing is filed with the cabinet within fifteen (15) days of receipt of the notice of noncompliance.

(2) A notice shall be deemed to have been properly served if it has been:

(a) Personally delivered to the owner of the paint or coatings manufacturing firm or person in charge; or if

(b) Sent by registered or certified mail, return receipt requested, to the last known address of the owner or person in charge.

(c) A copy of the notice shall be filed in the records of the cabinet.

Section 7. Hearings. If an appeal of a notice of noncompliance is filed as provided by Section 4 of this administrative regulation, the cabinet shall conduct a hearing in accordance with 902 KAR 1:400.

Section 8. Quarantine and Recall. (1) If a paint or similar surface coating; toy or other article intended for use by children or furniture for consumer use does not comply with the provisions of this administrative regulation, the manufacturer, distributor, or importer of the product may be:

(a) Requested by the cabinet to be voluntarily recalled from wholesale or retail establishments to which they were distributed; or

(b) Ordered by the cabinet to recall the product.

(2) A product that does not comply with the provisions of this administrative regulation may be quarantined by the cabinet.

(3) If the product is recalled, the cabinet shall be provided with:

(a) A copy of the recall notification;

(b) A list of all establishments contacted;

(c) The amount or number of the products returned to the manufacturer, distributor or importer;  
and

(d) The disposition of the flammable fabric or flammable fabric products recalled. (12 Ky.R. 1121; eff. 1-3-86; Am. 18 Ky.R. 1446; eff. 1-10-92; 22 Ky.R. 2474; eff. 8-1-96.)